

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6257 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AMAN @ CHAMAN MULCHAND KALWANI

Versus

DISTRICT MAGISTRATE OF PANCHMAHAL

Appearance:

MR RD GAGDEKAR for Petitioner

Mr.D.P. Joshi, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 04/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr.R. D. Gagdekar for the petitioner and learned A.G.P. Mr. D.P. Joshi for the respondents nos.1,2 and 3.

The detention order dated 29-1-1999 passed by the respondent no.1-District Magistrate, Panchmahals, Godhra against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "C" inter alia indicate that three Prohibition Cases vide CR no.49/98 dt.29-11-1998 at Kanpur Police Station, CR no.249/98 dt.8-12-98 at Godhra Town Police Station and CR no.4/99 dt.7-1-1999 at Godhra Town Police Station were registered against the petitioner for the offences made punishable under the Bombay Prohibition Act. That in those cases Indianmade foreign liquor has been seized from the possession of the petitioner. Over and above the abovestated material of prohibition cases, four witnesses on assurance of their anonymity have supplied information about the bootlegging activity of the petitioner.

3. That in consideration of the said material, the respondent no.1 has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the privilege claimed by the detaining authority in respect to anonymous witnesses under Section 9(2) of "PASA" is not genuine; that no details about the information furnished by said witnesses has been stated in the grounds of detention. Furthermore, the copies supplied to the petitioner does not disclose the fact that the statements of the witnesses have been verified personally by the detaining authority, and as such, the subjective satisfaction reached by the detaining authority being vitiated, the impugned order is invalid.

5.. That in the matter of JAKIRBHAI RAHIMBHAI NAGORI VS. DISTRICT MAGISTRATE, MEHSANA AND ORS. 1996(1) G.L.H. 300, this Court has expressed the view that statements of anonymous witnesses are required to be personally verified by the detaining authority for arriving at the subjective satisfaction in order to claim privilege under Section 9(2) of "PASA". That mechanical consideration of such statement without verification would vitiate the subjective satisfaction rendering the

detention order invalid.

6. In the instant case, on scrutiny of compilation produced by the petitioner it appears that copies of statements of witnesses though verified by the Dy.S.P, Godhra there is no endorsement to the effect that the respondent no.1 as detaining authority has personally verified the statements with regard to the apprehension shown by the witnesses about their safety and security. In view of the said fact, it appears that the respondent no.1 has relied on the statements of witnesses without proper verification while passing the impugned order which has vitiated the subjective satisfaction rendering the impugned order invalid.

7. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 29-1-1999 passed by the respondent no.1-District Magistrate, Panchmahals, Godhra against the petitioner is hereby quashed and set aside. The petitioner-detenu-Aman alias Chaman Mulchand Kalavani is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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